

REMARKS

The Amendments

The specification is amended to correct the obvious error noted in the Office Action. No new matter is added.

The claims are amended to correct obvious informalities and remove extraneous language. The amendments do not narrow the scope or substance of the claims. The amendments should not be interpreted as an acquiescence to any objection or rejection made in this application.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Restriction Requirement

Applicants respectfully note that indication in the Office Action that claims 7-14 would be rejoined with the elected catalyst claims in the event the catalyst claims are found allowable. Thus, non-elected claims 7-14 are retained in the application.

The Objection to the Disclosure

The disclosure is amended to correct the clear error noted in the Office Action. No new matter is added, since the correction would have been evident to one of ordinary skill in the art.

The Rejection under 35 U.S.C. §102

The rejection of claims 1-6 and 15-16 under 35 U.S.C. §102, as being anticipated by Hogan (EP 65400) is respectfully traversed.

Hogan discloses a catalyst made from the synthetic zeolite material, Nu-10. In Examples 3, 4, 6 and 12-14, the catalyst is made in the presence of triethylenetetramine (TETA), alumina and a colloidal silica. Hogan also provides a generic disclosure of cation exchange of the catalyst with hydrogenation/dehydrogenation components (page 12, lines 17-22). However, there do not appear to be any examples or specific embodiments of catalyst with such a hydrogenation/dehydrogenation component.

The Office Action relies on the non-prior art reference Miller (US Pub. No. 2006/0016724) as allegedly showing that Nu-10 of Hogan and the ZBM-30 catalyst of the instant claims are both TON framework type catalysts. Based on this alleged showing, it is apparently alleged that, therefore, Nu-10 and ZBM-30 are the same and Nu-10 anticipates ZBM-30. Applicants respectfully dispute these allegations at least for the following reasons.

First, applicants submit that Miller does not show that both Nu-10 and ZBM-30 are TON framework type catalysts. It would be evident to one of ordinary skill in the art from Miller that Table II of Miller does not include the ZSM-48, EU-2, ZBM-30 and EU-3 examples within the TON Framework type code. A closer review of Table II shows that the entries for ZSM-48, EU-

2, ZBM-30 and EU-3 are in a row separate from the Theta-1, ZSM-22, NU-10, ISI-1 and KZ-2 entries – only the latter having the TON framework type. Although the ZSM-48, EU-2, ZBM-30 and EU-3 examples do not include a separate Framework type code, they do contain separate entries for "Crystallographic Free Diameters of the Zeolite Channels" and "Number of T or O atoms forming Rings." It would be clear to one of ordinary skill in the art reading this table that the ZSM-48, EU-2, ZBM-30 and EU-3 examples were not included in the row describing TON framework catalysts. This is made even more clear from the disclosure at page 4, paragraph [0038], of Miller. Here, ZSM-48 is listed as a different group type of zeolite from the TON group type. This further supports that ZSM-48 and the others listed after it (including ZBM-30) in Table II are not included in the row for TON framework type zeolites.

Furthermore, it was known to those of ordinary skill in the art that ZBM-30 (as well as ZSM-48, EU-2 and EU-3) is not included in the TON type zeolites. Attached is an excerpt from the "Database of Zeolite Structures" pub. International Zeolite Association (2000). This is provided by the official international association for zeolite classification (see also "www.iza-structure.org"). The database includes Theta-1, ISI-1, KZ-2, NU-10, and ZSM-22, as TON types. It does not include any of ZBM-30, ZSM-48, EU-2 or EU-3. The knowledge in the art on the official zeolite classification further supports that ZBN-30 is not a TON type zeolite and such was not intended in Miller's Table II.

It is believed to be evident that ZBM-30 is not a TON type zeolite and, thus, Hogan's disclosure of an Nu-10 zeolite catalyst of the TON type does not anticipate nor suggest applicants' claimed catalyst.

Furthermore, even if ZBM-30 was a TON type catalyst, such would not support anticipation of the claims by Hogan. Even if ZBM-30 and Nu-10 were both TON type catalysts – which they are not – such does not equate to them being the same catalyst to support anticipation. Anticipation requires disclosure of an embodiment identically meeting all elements of the claims. It is insufficient if the zeolite base of the catalyst were the same "type" of catalyst.

Finally, even if Nu-10 was identical to ZBM-30 – which is clearly not the case – there would still not be anticipation because Hogan provides no specific embodiment which meets all elements of the claims. The teaching of the use of a hydrogenation/dehydrogenation component in Hogan is merely an optional generic suggestion. No actual embodiments disclosed by Hogan contain such a component. In the absence of a disclosure of a specific embodiment, there is no anticipation. A mere broad generic disclosure without any specific direction as to the specific element necessary to provide an anticipation is not an anticipatory disclosure. In other words, such a broad generic disclosure does not "describe" an embodiment therein in accordance with 35 U.S.C. §102. See In re Kollman et al, 201 USPQ 193 (CCPA 1979). If such a reference were anticipatory, it would not be possible to prove nonobviousness for selection inventions within a generic disclosure. Such is not the state of the law.

For all of the above reasons, it is urged that Hogan fails to anticipate any of the instant claims. Thus, the rejection under 35 U.S.C. §102 should be withdrawn. Further, Hogan fails to render any of the instant claims obvious to one of ordinary skill in the art. As established above, ZBM-30 is not only a distinct zeolite from Nu-10 but it is classified as a distinct type of zeolite from Nu-10. Hogan provides no suggestion to replace the Nu-10 zeolite with a ZBM-30 zeolite for its catalyst. Thus, Hogan also fails to support a 35 U.S.C. §103 rejection.

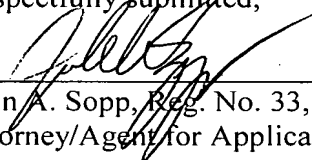
The Provisional Obviousness-type Double Patenting Rejections

The provisional rejections of claims 1-6 and 15-16 for obviousness-type double patenting over each of copending application Ser. Nos. 10/807,459 and 10/807,502 are overcome by the terminal disclaimer filed herewith directed to both applications.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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